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Dear Sir,

Re: NBDA's Comments on the consultation paper dated 12th April 2022 on "Issues relating to Media Ownership"

Attached please find NBDA's comments on the above mentioned subject.

Thanking you,

Yours faithfully,



Annie Joseph
Secretary General

CC: Mr. Rajat Sharma, President, NBDA

Encl: As above

NBDA's Comments on the consultation paper dated 12th April 2022 on "Issues relating to Media Ownership"

The News Broadcasters & Digital Association (NBDA) (formerly known as News Broadcasters Association (NBA) is an association of 24x7 television and digital broadcasters who deal with news and current affairs programmes. NBDA represents several important and leading national and regional private news and current affairs broadcasters who run news channels and digital platforms in Hindi, English, and Regional languages.

At the request of the Ministry of Information & Broadcasting, (“**MIB**”), TRAI has initiated the consultation process to reconsider its Recommendations on “*Issues Relating to Media Ownership dated 12.8.2014*” particularly in view of the advent of new digital technologies and subsequent technological developments in the media industry.

The consultation paper seeks the views of the stakeholders on need, nature and levels of safeguards with respect to issues relating to media ownership, particularly cross-media ownership and vertical and horizontal integration in the media and entertainment sector.

The consultation paper also deals with the extent of common ownership with various stakeholders involved in the value chain which includes the “*content production company/news media company*”, “*the distribution company*” and “*the nature of ownership in the tech media companies*”. The concern appears to be the common media ownership in a company trying to disseminate news, views and opinions through different mediums like television (TV), radio, print or digital.

NBDA appreciates TRAI's concerns in addressing issues impacting the broadcasting & media industry. TRAI has also acknowledged the role played by media as the fourth pillar of democracy especially in view of the fact that news has the power to shape viewpoints and national priorities. In view of the same, TRAI has pointed out the importance of dissemination of information and pluralism of views in the ‘*News genre*’. However, in its consultation paper TRAI has stated that issues of cross media ownership are peculiar to the media sector and raises the need of media regulation by the Government.

NBDA submits that considerable time has elapsed on the subject, while a reassessment may be done on the issues raised in the Consultation Paper taking into account the rise of digital media however, it is extremely important to assess the dominance of companies like Google and Facebook in dissemination of news and the potential control exercised by them in the market, which may be detrimental to not only the media plurality but also to competition and survival of the news broadcasters.

In a democratic society, while the media has the right to disseminate information, individuals have the right to receive information to form their own viewpoints. This is a part of their fundamental rights granted to the media and to the viewers under Article 19(1)(a) of the Constitution. As such, no measures ought to be considered / recommended that may have an impact of restricting dissemination of content as a form of freedom of speech and expression and right to carry on trade or occupation under Article 19(1)(g) of the Constitution.

It is also submitted that Article 14 of the Constitution underscores the fundamental doctrine of treating dissimilar entities differently. There are several services that enable content consumption through variety of mediums and in different formats / stages. Further, each such service / medium has different capabilities to *inter-alia* make available content in differing manner thereby providing differing consumer experiences. Considering that discrimination also occurs when persons who are in unequal position are being treated in the same (equal) way therefore, any framework facilitating non-discrimination and enabling a level playing field to promote fair competition would necessarily need to identify all the relevant parameters and aspects for classification and categorisation as similar, or equal, or within the same relevant market. In any event, the possibility of concerns regarding competition, ownership, control, and plurality or lack thereof in one or more markets cannot be the cause for recommending regulation in any and all markets.

At the outset, any entity doing business in India should enjoy rights, privileges and functions as determined in the context of market conditions, without any restrictions and curbs on the ownership and/or market concentration. It is important that choice to consumer and sufficient competition should always remain a paramount consideration to maintain plurality as well as for growth of Media & Entertainment (“M&E”) sector and a light-touch regulatory approach should be followed in preference to any prescriptive measures or stipulations.

The Indian M&E industry is a sunrise sector for the economy. It has shown tremendous growth over the years. The sector grew from INR 1.026 trillion in 2014¹ to INR 1.38 trillion in 2020². Further, with digitization and evolution of broadband networks, the sector offers huge potential for increased demand and business revenues.

The Consultation Paper focuses on print, radio, television and Internet as the four segments forming M&E sector. The same is also evident from chapter on cross media ownership in the Consultation Paper³. It is submitted that the other segments of M&E sector as well as non-M&E related aspects also immensely facilitate exposure of a person *inter-alia* to plural and diverse views, opinions and perspectives.

¹ Source: #shootingforthestars FICCI-KPMG Indian Media and Entertainment Industry Report 2015

² Source: Playing by new rules - India's Media & Entertainment sector reboots in 2020 FICCI-EY March 2021

In this background, the impact of four segments of M&E sector (i.e., print, radio, television and Internet) ought not be looked into in isolation, and that it is imperative impact analysis of all other remaining segments of M&E sector is carried out along with an impact analysis of non-M&E related aspects.

In response to the Questions raised in the consultation paper, NBDA submits as under:

Q1. Media industry has expanded in an unprecedented manner. In addition to conventional television & print medium, the industry now comprises news & media-based portals, IP based website/ video portals (including YouTube/ Facebook/ Twitter/ Instagram/ Apps other OTT portals etc.). Considering overall scenario, do you think there is a need for monitoring cross media ownership and Control? Please provide detailed reasoning to support your answer.

NBDA Comment:

At the outset, NBDA submits that TRAI's statutory and jurisdictional powers in conducting such a consultation that also impacts media segments other than broadcasting services, are beyond the authority of TRAI.

Section 11 of the Telecom Regulatory Authority of India Act, 1997 ("TRAI Act") describes the functions of TRAI. These functions are divided into two broad areas: (i) making recommendations in respect of certain matters, and (ii) performing certain regulatory functions. On an assessment of its functions, it is clear that recommending or opining on cross media ownership is beyond the purview of TRAI's jurisdiction.

Without prejudice to the above, NBDA submits that there is no requirement for monitoring cross media ownership and control for the reasons stated below:-

1. That structural regulations to monitor media ownership is a violation of the free speech rights and the constitutional protection provided to the media under Article 19(1)(a) of the Constitution. These free speech rights of the media have been affirmed by the Hon'ble Supreme Court in various judgments.⁴
2. That Article 19(1)(g) gives all the citizens the right to practice any profession or to carry on any occupation, trade or business. The main objective behind this constitutional right is to establish economic unity and free flow of trade and commerce, without the state levelling any restrictions except under Article 19(6).

⁴ Express Newspaper Vs. union of India (AIR 1958 SC 578); Bennett Coleman Vs. Union of India (AIR 1973 SC 106 para 23); Sakal Newspaper Vs Union of India (AIR 1962 SC 305) ;Indian Express Newspapers (Bombay)

These rights have also been affirmed by the Hon'ble Supreme Court in various judgments.⁵

3. That the proposed restraint on Cross Media holdings is an attempt to regulate the business activities and freedom of speech and expression of the media, which would violate the constitutional rights of the media to disseminate information and will also affect the fundamental rights of all citizens to receive information under Article 19(1)(a).
4. That in India, there is no reason to impose any restrictions / regulations on cross-media ownership, since media pluralism has not in any way been affected by any cross-media ownership of media entities. In fact, media pluralism is on the increase with the advent of new technologies.
5. That with the extensive growth of different mediums for disseminating news including the 403 news channels out of approximately 900 TV channels, 1,44,520 lakh newspapers, 386 radio channels, and 470 All India Radio stations operated by Prasar Bharti⁶, which in fact disseminates news in 23 languages and 179 dialects, reaching 92% of the country's area and 99.19% of the country's population along with several digital news platforms which are registered with the MIB/MEITY and over 40 OTT platforms with 400 million customers, a new approach must be adopted in respect of the issues raised in the consultation paper as the consumer already has multiple choices available to him/her through the aforementioned mediums to receive news. These mediums are owned by different entities/owners, therefore the concerns of plurality raised in para 1.6 of the Consultation Paper- *"that in case an entity owns a newspaper, radio channel and television channel, it is likely that consumer will get same/similar views across three forms of media leading to undesirable situation"* are unfounded and should not be a matter of concern. From the Consultation Paper itself, it may be noted that there are myriad players in all the four segments of media, which also shows there is no case of monopoly or market failure warranting the present exercise. It is submitted that there are hardly any entry barriers and the operation of principles of free market economy ensures that even small players are present and are able to compete in the aforesaid four segments of media.

In fact in order to promote plurality of views, private radio stations should be permitted to create their own news content and be allowed to broadcast it. The Government should revisit the policy of news being broadcast only by the public broadcaster Prasar Bharati on radio.

6. That TRAI's Consultation Paper on media ownership was commissioned on the basis of a study conducted by the Administrative Staff College of India,

⁵ Hathising Manufacturing Company, Ltd. v. Union of India A.I.R 1960 S.C 923; Dwarka Prasad v State of U.P AIR 1954 SC 224, Indian Cement v State Of A.P (1988 (1) SCC 745).

Hyderabad (“ASCI”) on media concentration in India. However, the study was conducted in 2013 and is now outdated.⁷ Therefore, regulating cross media ownership and media concentration in India on the basis of the above study is not advisable.

7. That the Consultation Paper does not actually show any empirical or other data that indicates a negative correlation between cross-media ownership and media plurality. In the absence of any such correlation, the entire premise on which the consultation paper is based, is rendered obsolete.
8. That the Consultation Paper has not shown any evidence / provided any data with respect to whether there is currently a monopoly in the media sector with regard to dissemination of news and information. Data disclosed by the Consultation Paper does not show any monopolistic practices, nor does it show that such cross-media ownership has negatively impacted media pluralism. In fact, the Indian media market is sufficiently competitive, diverse and that in itself satisfies media plurality as competitors are not colluding together to control the information/news that is being disseminated.
9. That the regulatory restrictions are needed in an industry characterized by low or no competition, abuse of monopolistic position by an incumbent. However, in the present circumstances, the risk of individual entity owning two or more media outlets and significantly influencing public opinion at this stage of growth seems improbable and theoretical. Accordingly, introducing restrictions on cross media ownership/horizontal integration will only stifle the growth of the industry.
10. That introduction of any restrictions on cross-media ownership, could also have the undesired effect of restricting competition if the regulations make entry into a sector difficult which would ironically end up restricting media plurality. All media entities, whether involved in radio, TV or print, are structured on an extremely capital-intensive model and thus tend to model their businesses on multiples revenue streams. In the event of any restrictions, such media entities may be constrained to reduce their future funding, which would further affect their economic viability and may lead to closures, which in turn would reduce consumer choice and competition.
11. That present era is that of globalisation and consolidation by way of merger and acquisition, so as to access and optimally utilise the resources of capital formation for the growth and development of the media sector. Therefore, the broadcasters must have adequate technology, capital and manpower resources to compete with the global media companies. Thus, the process of capital formation is one of the key ingredients to acquire and accumulate competitive strength. Any kind of restrictions are likely to adversely affect the said process, which would be prejudicial and detrimental to the growth of media companies.

12. That media companies create and look at monetizing the same content across different platforms and media, which allows them to leverage on economies of scale and ultimately providing services to consumers of different strata, level, region at competitive rates. Cross-Media holdings allow cross-subsidizing for entities and bring in synergies between different arms of media entities that also allow them to operate in a free and democratic environment and not fall prey to solely commercial business objectives.
13. That if TRAI / MoI&B formulates any policy or attempts to regulate media ownership in any manner as proposed in the Consultation Paper, it could potentially lead to many companies / entities / individuals engaging in complex corporate structures with offshore entities, etc. who try to circumvent the regulations, leading to part of the media sector operating in a grey area, over which TRAI / MoI&B / any other regulatory authority, may have even less control.
14. That in the Consultation Paper, it is stated that *‘The consequences of rapid technological development for informational diversity and media pluralism are mixed. An increasingly digital media environment gives internet users access to information from more and more sources, increasing the opportunities for people to use diverse sources and encounter different perspectives. with the emergence of social media platforms and Apps which depend on user generated content, the news and facts do not depend on any media organization for its conveyance to the public. The emergence of digital media has increased the potential of media to raise the voice of the powerless and marginalized by multiple times, thereby acting as a gloss over the role played by the traditional sources of media in the society....’*⁷. Therefore, it can be concluded that TRAI is in agreement with the fact that there are sufficient mediums to disseminate news that in fact, threat to media plurality does not exist. In the light of the constant growth and evolution of the media landscape in India and the rest of the world, it is impossible for competition to be restricted to such an extent that media entities will be able to control the information / news being disseminated and the consumers will receive only a few views / opinions.
15. That restrictions on cross media ownership will not have any impact on the quality of content that is being disseminated including fake news. That the Consultation Paper has also observed that algorithms being used by social networking platforms and search engines to provide users with a personalized experience based on their individual preferences represents a challenge to media pluralism. It is submitted that assuming that the observations of TRAI are correct, this problem cannot be solved by regulating cross-media ownership as even if there are 100 (hundred) different social networking platforms, each one will yet apply such algorithm to provide personalized information based on user preferences. Therefore, rather than considering any recommendations on cross-

media ownership, policies / guidelines may be put in place in respect of fake or unauthenticated news.

16. That news through the internet is getting disseminated by various digital aggregators/big tech companies, who have emerged as the de facto regulators, deciding on what content a viewer should see or what a consumer consumes. Around 40% of the trending queries on Google are news-related. In the present situation, it is such big tech companies that influence the opinion of the masses. Post Covid 19 pandemic, the overall percentage of people consuming news through social media has drastically increased. Therefore, the concept of regulating cross media ownership is virtually redundant.
17. That TRAI should bear in mind that comparisons with other countries would not be correct in view of the fact that international markets have defined the level of concentration in media ownership and cross media holdings based on the peculiar requirements of their respective jurisdictions and on prevailing social and economic conditions. Each country has developed distinct laws for the media sector. In fact, cross-media regulations are being withdrawn from many of the countries as they now recognize that traditional print/TV/Radio are declining, and media companies necessarily have to diversify into other sectors of the industry. Digital newspapers require TV content, and TV websites require textual content, for which the presence of media companies in both platforms is necessary.
18. That the revenues of traditional media (including TV, print and radio) are decreasing at a fast pace. Therefore, under the circumstances, any additional regulation that may further stifle the growth of traditional media is avoidable. The TV broadcast sector is facing a stiffer challenge from OTT platforms and does not have the liberty or the freedom under extant regulations to effectively deal with this challenge. By imposing horizontal integration restrictions (as proposed by TRAI in this consultation) TRAI is effectively depriving the broadcasting sector from meeting the OTT challenge when telecom industry has been given a free hand to deal with OTT competition. Specifically in the distribution segment, there is lack of parity in the regulations and laws and is evident from the fact that telecom sector is not subject to regulations such as the Interconnect Regulations, Tariff Orders, etc.
19. That the Indian media economy requires cross media holdings by which one media segment can augment the growth of the other, considering the growth environment. An economically well-placed media entity should be permitted to invest in print, TV, radio, and online media segments and vice versa. Restricting companies from making investments in other media segments will affect their growth and hinder expansion of business, which are vital for the media industry to progress.

20. That with the advent of digital/OTT/ on-line media, convergence is a tangible reality and the term 'cross-media' is no longer relevant. Convergence, Internet, and Mobile telephony brings the newspaper (e-newspaper), TV (simulcast live streaming) and radio channel on a single screen and/or through mobile apps, and it has become mandatory and inevitable for every business entities to adapt to these fast changing technologies to cater to the fast changing tastes/ needs of its consumers/ reader/ viewers/ listeners etc. for which expansion of business activities is the only solution, failing which the current business activities will become obsolete and that will ultimately and adversely impact the economy by increasing unemployment, poverty and reduction in per capita income.
21. That in the TV distribution space, state controlled DTH Service DD Freedish has highest reach with over 45 million connections. This service is free and the viewers can enjoy the content without any subscription fees. The DD National and main regional news channels are also carried on DD Freedish along with private news channels and channels of other genre. This service coupled with terrestrial transmission of Doordarshan reaches maximum homes in the country. Hence any concern of non-plurality of views whether through broadcasting or distribution does not arise.
22. That in any event, the provisions of the existing competition laws consider contemporary realities on competition, monopoly, and restrictive trade practices. The law distinguishes between monopoly tendencies by defining permissible market shares and encourages healthy competition. Therefore, there is no need for a separate law on cross media ownership.
23. That the M&E sector is over regulated compared to any other business sector and any further restrictions will curtail the growth of this sector instead of bringing healthy competition. For example: -
- a. Every year, in the first issue after the last day of February, a statement regarding the ownership and other details of the newspaper / magazines are to be published in Form IV in the Schedule to the Registration of Newspaper [Central] Rules, 1956.
 - b. Every publisher furnishes to the Press Registrar an annual statement regarding the newspaper in Form II in the Schedule to the Registration of Newspaper [Central] Rules, 1956. Failure in timely submission of the annual statement is liable for penal action under the Press and Registration of Books Act.
 - c. TV channels, and FM Radio have to strictly comply with the licensing conditions issued by the MIB. Newspapers and Magazines have to strictly comply with the Press and Registration of Books Act.

- d. Finally, it is worthy to note, that under various Indian laws, for e.g. Companies Act, 2013, certain disclosures with respect to the shareholding, annual returns, etc. of companies already have to be made and some of this information (especially with respect to public companies) is also available in the public domain. This means that the information with respect to cross-media ownership, is not a closely held secret, but it is in fact quite open and transparent as to which media conglomerates own different verticals of the media, thus reducing the chance of any consumers / individuals being surprised that the newspaper they read and the channel they watch are owned by the same entity.

Therefore, there are several statutes aimed at monitoring and tracking the ownership of media organisations engaged in printing, publishing, and broadcasting.

24. That under the circumstances, TRAI may ideally recommend liberalization of current regulations rather than introducing further stringent and restrictive regulations on cross media ownership/horizontal or vertical integration. This will also support the Government of India's stated position of '*minimum government and maximum governance*' and facilitate '*ease of doing business in India*'.

Q2. Media has the capacity to influence opinion of masses, more so the news media. Should there be a common mechanism to monitor ownership of print, television, radio, or other internet-based news media?

- a. If yes, elaborate on the Authority, structure, and mechanism of such monitoring mechanism/ regime?***
- b. If no, should there be a self-regulatory mechanism by the industry? What should be the mechanism for defining and implementing such industry based self-regulatory regime? In case some players do not follow the self-regulation, what should be the procedure for enforcing such regulations?***

NBDA Comment:

NBDA submits that based on the submissions made to Question No. 1 above, there is no requirement to bring in any form of mechanism (common or otherwise) or regulation to monitor ownership of print, TV, radio and other internet-based media, for the following reasons: -

1. At the outset it should be noted that if the concern is anti-competitive behaviour due to such cross-media ownership or vertical integration, there are already regulatory bodies existing in India – the Competition Commission of India (“**CCI**”) and the Securities and Exchange Board of India (“**SEBI**”) – which govern all such kinds of transactions, including any mergers and acquisitions of / by media entities. The presence of the CCI and SEBI and the laws established under the Competition Act, 2002 and Securities and Exchange Board of India

Act, 1992 (“**the SEBI Act**”) are sufficient by way of a safeguard to prevent any anti-competitive or monopolistic practices. Therefore, there are enough Authorities/Bodies and regulations to monitor ownership of print, TV, radio, or other internet-based news media.

2. Under Section 3 and 4 of the Competition Act, 2002, anti-competitive arrangements and abuse of dominant position is prohibited and per Section 19 and 20, ex-post investigations of violations are allowed. Additionally, the Competition Act, 2002 empowers the CCI to regulate mergers and acquisitions based on whether any combination is going to cause or is likely to cause an appreciable adverse effect on competition. CCI can investigate and impose restrictions or modify such arrangements or impose a penalty or in case of mergers, can disallow a proposed merger if the proposed merger may have an adverse effect on competition. Similarly, under the SEBI Act, SEBI has been granted the power of regulating the stock market. Under such provisions and regulations, SEBI has promulgated the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, which provides the process / laws to be followed in the event of a takeover of 25% or more of voting rights of a target company, and includes public disclosures, minimum price, etc. Any non-compliance with such provisions can lead to investigations and penalties.
3. The aforementioned laws / guidelines regulate media ownership / control of media entities and therefore there is already a clear and functional mechanism to regulate ownership and control in the media sector and further regulations are not required. Additionally, it is pertinent to note that presently in India, separate sectors of industry do not have separate regulatory bodies governing their ownership and control, and all sectors fall under the purview of the CCI / SEBI.
4. In addition to SEBI and CCI, under the Companies Act, 2013, the National Company Law Tribunal (“**NCLT**”) has also been provided power to sanction the arrangements and amalgamations and also examine issues related to rights of shareholders / stakeholders during mergers / amalgamations.
5. Further, the Consultation Paper has also drawn attention to, the Department for Promotion of Industry and Internal Trade (“**DPIIT**”) which has issued orders appointing an Advisory Committee for its “*Open Door Network for Digital Commerce Project*” that is aimed at curbing “*digital monopolies*” by democratizing digital commerce in India and other related strategies⁸.
6. That prior approval of the Central Government, through the Foreign Investment Facilitation Portal of the DPIIT, is required in case of foreign direct investments (“**FDI**”) in the print and media sector as well as foreign investments in entities involved in uploading/ streaming of news and current affairs through digital media, as per the applicable FDI Policy.⁹

7. Vide MIB's notification dated 16.11.2020, all news websites/portals, news aggregators and news agencies operating through digital media, with foreign investments under the prescribed threshold, must submit, *inter alia*, details such as the shareholding pattern, names and addresses of the shareholders, promoters and significant beneficial owners to the MIB.
8. That in addition to the above, the media entities are highly regulated including under the Uplinking and Downlinking Guidelines, 2011. The aforementioned Guidelines provide for intimation regarding change in shareholding pattern and FDI. Several statutes regulate the media like Cable Television Networks (Regulation) Act, 1995, Information Technology Act, 2000, Indian Penal Code, 1860, Emblems and Names (Prevention of Improper Use) Act, 1950, Indecent Representation of Women (Prohibition) Act, 1986, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Protection of Children from Sexual Offences Act, 2012, the Copyright Act, 1957 etc. The media entities are also bound by various guidelines issued by the respective ministries and self-regulatory bodies such as News Broadcasting & Digital Standards Authority and Broadcasting Content Complaints Council. These self-regulatory bodies have even been mentioned by the Hon'ble Supreme Court in various judgments.
9. That it may be noted that the creation of a separate regulator to oversee media ownership and control will only lead to an overlap of jurisdiction.

Q3. There are regulatory agencies like CCI and SEBI among others that monitor and regulate mergers, acquisitions, and takeovers. Is there a need for any additional regulatory/ monitoring mechanism? Do you think there's a need to monitor takeovers, acquisitions of media companies, especially the news media companies?

3.1 If yes, which agency/ ministry should be entrusted with the task of such data collection, regulation & monitoring?

- a. Whether such monitoring/ control be ex-ante as is the case with combinations in the Competition Act 2002?***
- b. What should be the procedure of reporting and monitoring? What should be the periodicity of such reporting?***
- c. What should be the powers of the concerned authority for enforcing regulatory provisions, inter-alia including imposition of financial disincentives, cancellation of license/registration etc.?***

3.2 If no, please provide an elaborate justification as to why there is no need for such a mechanism? Provide market data to substantiate your opinion.

NBDA Comment:

In view of the submissions made in Question No. 1 and 2, NBDA submits that there is no need for any additional regulatory/ monitoring mechanism to monitor takeovers, acquisitions of media companies, especially the news media companies, for the following reasons:

1. That with each media segment being governed by specific laws and regulations there is no need to bring in additional regulations in the form of restrictions as contemplated by the Consultation Paper.
2. That TRAI is proceeding on the premise that mergers & acquisitions (M&A) deals in the media sector have a big impact on viewpoint plurality. Media plurality cannot be achieved by fragmented ownership and control. It is incorrect to assume that an entity with a cross media ownership will disseminate similar views on issues. The management of the different segments of media requires different skill sets and entirely separate manpower resources meeting the particular requirement of that media segment.
3. That there is no need to bring in additional restrictions on M&A deals in the Indian media sector. M&A deals are integral to any business restructuring exercise, whether in media or other sectors. Specific guidelines and rules govern M&A and any fear of hindrance to competition or abuse of any dominant position by an entity would be adequately addressed under competition laws. The CCI is empowered to regulate corporate combinations that are anti-competitive and result in abuse of dominant position and is also granted powers to investigate and disallow any mergers or proposed mergers that may have an adverse impact on competition.
4. That despite the Small Target Exemption as allowed currently, the Indian Competition law framework is well equipped to deal with issues affecting competition across sectors, including the M&E sector. As such a review by TRAI of M&A in the media sector to protect the need for diversity or market control/concentration is not required.
5. That there are other regulators such as SEBI, DPIIT and NCLT/NCLAT, which have sufficient powers under respective statutes to oversee and regulate M&A deals across sectors. There exists viewpoint plurality and healthy competition in the Indian media sector and hence there is no need to impose additional restrictions on M&A in media to achieve this objective.
6. That the right to exit a business is as valuable right as a right to enter a business as this is a part of “*ease of doing business*”. No entity can be permanently assumed to be carrying on the business for indefinite period of time. There are many business cycles an entrepreneur has to go through and at some point of time, it may not be feasible for the business entity to make further investments or stay

afloat. Hence, not to allow any business restructuring in terms of sale, merger, transfer of interest is harmful to the industry. There are enough conditions in the licenses or permissions which ensures entry of serious players. However, once the business is set up and made operational, a business entity should be allowed to get the right value of its investments if such entity decides to exit the business due to any reason. If M&A are restricted, then it directly affects the valuation of business entities operating in that space. There may be some entities which may not be able to continue with the operations due to financial or other reasons and if there is no exit option, such business entities may be forced to shut down operations resulting in waste of resources. This situation is unwarranted and also directly impacts the new investment in the sector and results in unemployment. No investor would like to put money where exiting is difficult and uncertain.

Q4. Please suggest the most suitable criteria to define and measure Ownership/Control along with suitable reasoning. Define Control and prescribe the statutory/ regulatory/ legal powers to enforce such criteria of Control.

NBDA Comment:

NBDA submits that there is no need to measure ownership/control of an entity over a media outlet with respect to cross media holdings, in view of the submissions made to Question No. 1 above. Furthermore, TRAI should not proceed with any kind of proposal that fixes any threshold limits for holdings across media to conclude that there is 'control' over that entity.

Q5. Should the licensor, based on recommendations of the concerned monitoring agency/ regulator, restrain any entity from entering the media sector in public interest? Please elaborate your answer.

NBDA Comment:

Media is the fourth estate or pillar of democracy. Media's inherent ability to reach the public gives it the power and ability to present independent facts and opinion on several issues, including policies, government performance, etc. Therefore, it is important for the media to be neutral in its report. NBDA submits that as far as the broadcasting sector is concerned, the licensor i.e., the MoI&B should restrict the entry of following categories of entities:

1. Political Parties/Groups; Political Bodies
2. Religious Bodies
3. Urban and Local Bodies, Panchayati Raj Bodies and other Publicly Funded Bodies
4. Central Government Ministries and Departments, Central Government owned Companies, Undertakings, Joint Ventures of the Central Government funded entities

5. State Government Departments, State Government owned Companies, Undertakings, Joint Ventures of the State Government funded entities

The term “*entities*” referred to above should include not only companies but also sole proprietorships, association of persons, body of individuals, partnership firms, limited liability partnerships, corporate bodies, trusts (including discretionary trusts) and undertakings and inter-connected undertakings.

While extending the general disqualifications to other entities including surrogate entities, the MoI&B should exercise its powers of prohibition only on the basis of verified information, in a due, fair and transparent manner.

In fact, the public broadcaster Doordarshan should not enjoy any advantage or preferential treatment of its products/channels in carriage across platforms, which it compels by way of rules and regulations framed by it.

While media has tremendous potential to inform citizens about events and issues that occur in their world, it also has unparalleled potential for abuse by political partisans to propagate and further their own agenda. The goal of any rule or regulation imposed upon the media must necessarily achieve the objective of preventing abuse of dominance of the media and ensuring impartial, neutral and accurate coverage of public issues.

Q6. Which of the following methods should be used for measuring market concentration?

- (i). Concentration Ratios***
- (ii). Lerner’s Index***
- (iii). Hirschman-Herfindahl Index (HHI)***
- (iv). Any other***

Please comment on the suitability of HHI for measuring concentration in a media segment in a relevant market.

In case you support “Any other” method, please substantiate your view with a well-developed methodology for measuring concentration in a media segment in a relevant market.

NBDA Comment:

NBDA submits that in view of the submissions made to the Questions above, there is no requirement of any method for measuring market concentration.

Q7. What all genres shall be considered for the purpose of overseeing of media ownership to ensure viewpoint plurality? Please elaborate your response with justifications.

NBDA Comment:

NBDA submits that there is plurality in all genres and therefore no particular genre needs to be considered for the purpose of overseeing of media ownership to ensure viewpoint plurality.

1. Without prejudice to the above, there have been submissions made by certain stakeholders in the previous consultation that only news and current affairs genre should be considered while devising ways and means to ensure viewpoint plurality in media, emphatically suggesting that other genres such as “entertainment” genres are not to be considered for achieving this objective. In fact, General Entertainment Channels are also widely watched and influence ‘viewpoints’.
2. It is reiterated that media ownership rules/controls in cross media holdings are unnecessary in India in the absence of demonstrable risk and concrete evidence which the consultation paper fails to provide.

Q8. Which media segment amongst the following would be relevant for encouraging viewpoint plurality?

- 1. Print media viz. Newspaper & magazine***
- 2. Television***
- 3. Radio***
- 4. Online media/Digital media/OTT***
- 5. All or some of the above***

Please substantiate your answer with appropriate reasons.

NBDA Comment:

NBDA submits that all media segments mentioned above would be relevant for encouraging viewpoint plurality for the reasons stated below:-

1. That allowing unrestricted access to a media entity to voice its views on all available delivery platforms is in fact propagating media pluralism. A media entity must be allowed to use print, TV, radio, or internet, at the same time, to broadcast news or information. Any form of ownership control will restrict the freedom of press and would in fact be a hurdle to achieving ‘media pluralism’.
2. The efficiencies gained from combined media holdings will allow media companies to compete better in today’s challenging marketplace. Even within the same vertical segment, greater choice in the form of multiple formats can be made available to consumers.

3. Competition and pluralism are not the same concepts and should not be confused. They represent two separate issues, yet their assessment will typically be intertwined. Existence of competition denotes existence of plurality. There is competition in the Indian media space and in the event, there is a threat to competition or unfair trade practices are being followed, then the CCI enacted under the Competition Act, 2002 is the redressal forum/mechanism to address issues governing competition or the lack of it. Effective competition in media will foster not only economic growth but also plurality.
4. That there is no need to impose restrictions on cross media holdings in the media sector or for that purpose identify segments or genres to devise ways and means to ensure plurality. There must be forbearance as far as imposition of any kind of restrictions on cross-media holdings is concerned. If horizontal integration is permitted among media entities, they will be able to save on costs and provide better quality content to the consumer. The overall experience of the consumer will improve significantly given the ability of the media entities to deliver content across multiple platforms.
5. It should be noted that the Indian media industry is one of the most complex and competitive in the world and has tremendous potential to grow. With the sheer number of stakeholders in the market today, in every media segment, there is no threat to plurality of views being communicated to the viewers.

Q9. Should the word 'media' include television, print media, digital/online media, and other media entities? Alternatively, whether 'television' as a media segment should include only DPOs (including LCOs) or only Broadcasters or both for ensuring viewpoint plurality in the television segment? Please justify your answer.

NBDA Comment:

NBDA submits that the word '*media*' should include TV, print media, digital/online media, and other media entities, for the reasons given herein under:-

1. That the word '*media*' per se refers to any means of communications used to store or deliver information or data. However, depending on the type of medium, the different mediums are termed as '*print media*', '*TV media*', '*digital/online media*'.
2. That the activity of '*TV*' will involve the broadcasting and distribution. However, these two aspects are entirely different activities wherein the first refers to the content creation and transmission, the second is related to content carrier and distribution/ delivery to end users/ viewers. The distribution involves re-transmission of the TV signals through various permitted mediums such as DTH, IPTV, HITS and MSO (including LCOs) whereas broadcasting involves content generation, aggregation and supply of TV signals in a manner that it is made available to the targeted viewers by using satellites.

3. TRAI Interconnection Regulations, Tariff Order and Quality of Service (QoS) Regulations contains elaborate provisions related to the distribution aspects of the 'TV' and there is 'Must Provide', 'Must Carry' clauses and various other provisions which ensures that there is effective interconnection between the broadcaster and the distributor and there is transparency, non-discrimination amongst the service providers.
4. There are further cross media holding restrictions in case of DTH / IPTV / HITS services wherein a broadcaster entity is not allowed to own more than 20% of the shareholding either directly or indirectly in these distribution platforms and similarly these distribution platforms cannot directly or indirectly own more than 20% in the TV broadcasting.
5. That though TV services will definitely include broadcasters and the distributors but from the point of view of the plurality of views in the sector, the question may not arise as broadcasting and distribution are totally different aspects as one relates to the content and the other relates to the carrier and it is agnostic to the content being re-transmitted.

Q10. What should be the basis of classification of relevant geographic markets for evaluating concentration in media ownership? Should it be aligned with state or a region/Metro/Non-metro cities or the whole country? Please support your answer with reasons.

Q11. Should the relevant geographic market be defined on linguistic criteria? If yes, please list the languages which may be included in this exercise, along with justifications.

Q12. Should the relevant geographic market be defined uniformly for the whole country? Is there a need to adopt separate criteria for certain states and/or Union Territories in light of their peculiar circumstances such as difficult terrain, hilly region, huge distance from mainland, low media penetration etc.?

In case you support the need of a separate criteria for certain states and/or union territories, please specify such states and/or union territories and the criteria suitable for them along with appropriate justifications.

Q13. Which of the following metrics should be used to measure the level of consumption of one type of media (media outlet) in a relevant market?

13.1 Volume of consumption

13.2 Reach

13.3 Revenue

13.4 Any other

Please elaborate your response with justifications.

In case you find “Any other” metric to be suitable for the said purpose, you are requested to support your view with a detailed methodology.

Q14. Whether circulation details of newspapers should be used as a proxy for readership to measure the reach of media outlet in print segment in a relevant market?

In case you disagree, kindly provide a detailed methodology to measure the level of consumption of print media segment.

NBDA comments in respect of Question 10 -14.

NBDA submits that in view of the fact that it is submitted that there should be no restriction on cross media ownership as stated in the answers given to Questions 1 and 2 above, the above-mentioned Questions do not require to be answered.

Q15. According to you, what measures should be adopted to discount the impact of bouquet system of channel distribution on the viewership of television channels? Please support your suggestion with reasoning.

NBDA Comment:

NBDA submits as under: -

1. That the bouquet system of channel distribution benefits the entire value chain of the broadcasting industry, be it the broadcasters, distributors or the consumers. Under the present TRAI regulations, the broadcasters are obligated to offer their channels on a-la-carte basis. In addition, they can offer the mix of channels in form of bouquets. However, the consumer interest is fully protected as there is a complete choice available to the consumer to select channels on a-la-carte basis or in the form of bouquets of the broadcasters/DPOs. Further the MRP based regime also protects consumer interest as the price payable by the consumers for subscribing to a particular TV channel is clearly known to him/her. The price comparison of a channel on a-la-carte / bouquet is also clearly made known, so that consumer can choose a-la-carte or bouquet channels. The consumer has full freedom to select or de-select any a-la-carte channel or any bouquet without any restrictions or hindrances.
2. That the broadcasting sector is identified as a champion sector by the government which has the potential to become global champion and grow at double-digit rates. However, due to over-regulation, inconsistencies and frequent changes in regulations by the sector regulator, this sector is observing de-growth and cord-cutting by consumers. Such frequent changes in regulations also invite consumer

ire and angst against the system and diverts them to alternate mediums of news consumption which lead to loss for the stakeholders and the government.

3. That it may not be correct to assume that the bouquet system of channel distribution negatively impacts the choice of the consumer.
4. That discounting and clubbing of product and services is a practice followed across all industries. The practice of giving higher discount and making more number of channels available to viewers to suit their budget cannot be termed as "*practices not in consumer interest*". The broadcasters try to create different products for the sake of consumer interest and choice and thereby makes the channel available to viewers for sampling at a negligible or nil incremental cost in a bouquet. Eventually, the choice of watching the channel or not is the consumer's choice.

Further, the nature of channels, whether pay or FTA is not affecting the consumer choice of watching the channel. The consumer behaviour needs to be understood in the right perspective as it is assumed that a consumer is happy and content with just few channels. However, due to various reasons an Indian viewer generally likes to have access to a large number of TV channels, even when he/she is actually spending viewing time on fewer channels. But these fewer channels keep on changing as the consumer loyalty is generally not towards the channel per se but towards the program or the content being available on a channel at the time when the particular viewer watches the TV and the consumer generally likes to surf a lot of channels before deciding to watch a particular channel unless he/she has some pre-decided choice.

5. That TRAI has assumed viewer to be a passive stakeholder. In today's age of technology and information, the consumer is well aware about the choices available to him/her and takes a conscious decision after examining the pros and cons. With many alternate mediums available to him/her, the broadcasting industry or for that matter any industry cannot take consumer for granted or cannot assume that consumers are unaware. Hence when free choice is available to consumer with full information on the price on both a-la-carte basis or bouquet basis, it is not correct to assume that if 75% of the viewers have opted for bouquet, it is due to perverse pricing. This is definitely due to the consumer choice and preference to opt for bouquets which apart from offering more value also removes the burden of selecting 200-300 channels individually.
6. That in view of the multi-lingual society, family system, large number of genres, different socio-economic-educational strata, consumers generally like to have a large number of channels in their TV package so that they can surf and choose the content to get different perspectives and not just subscribe to a single news channel. When the country has already built the capacity both in terms of number of home-grown TV channels and the large channel carrying capacity of the

distributors, there is no point in restricting the choice of consumers. The domestic broadcasting industry has successfully grown despite the prowess of foreign media entities and has contributed immensely in the “*Atmanirbhar Bharat*”.

7. That there is no channel carrying capacity constraint with digitization. There is no space crunch with the DPOs and any network can easily carry 300-400 channels. Post digitization, the channel carrying capacity of the DPOs have increased multifold. In this situation, if the channel offerings are envisaged to be restricted to 25-30 channels, there will be a gross under-utilization of the capacity already created and will harm the stakeholders such as MSO, LCO, DTH operators etc. After digitization, when the industry is able to offer hundreds of channels with clear audio video signals, restricting the number through regulatory measures will also be a complete waste of national resources. It will be a complete undoing of the entire Digital Addressable System rollout which aimed at digitization of TV services with a view to offer enhanced capacity to viewers and introduce addressability.
8. That TRAI while making reference to the “*Must Carry*” provisions has itself acknowledged that there is enough capacity with distributors by stating that - *“There are six private DTH operators which are having capacity of carrying around 400-600 channels on their platform. The majority of MSOs are having capacity ranging from 300-600 channels”*. If a broadcaster who has mix of channels across genres/languages and it offers discount on bouquet, there is no harm caused to the consumer. The viewer is actually getting more services for less. It also makes business sense for the broadcaster as he can bundle his services even at the time of advertisement sales.
9. That there cannot be a cap on discounts offered in the economy model adopted by India. If such caps are introduced, then the entire booming digital industry will collapse. Discounts and attractive prices to consumers have become norm of trade in India and give a boost to the economy. The right of one industry in bundling its services and offering a better value proposition to the consumers cannot be taken away just because TRAI has based its analysis on assumptions and presumptions.
10. That a bundled service offers value and the consumer generally chooses bundled service/bouquet over a la carte channels. Since both options are available of a la carte and combo or bouquet along with pricing there cannot be any illusion regarding misleading the consumer. The very fact that there is higher uptake of bouquets by the consumers vis-a-vis a lower uptake of a-la-carte channels shows consumer preference towards bouquets.
11. That as per the present regulations, the consumer can choose from the following options or a mix of any: -

- i. Bouquets offered by the DPO.
- ii. Bouquets offered by the broadcasters.
- iii. A-la-carte channels.
- iv. A subscriber if so chooses, can independently create the pack of only required channels.

That the DPO who has signed agreement with broadcaster is mandated to carry the broadcasters' channels on a-la-carte basis and he is also not allowed to break the broadcaster's bouquet. This ensures that the real choice of selection remains with the viewers. In addition, a DPO can form his bouquets keeping in view the preferences of his target viewers. There is a clear information on the MRP and DRP (Distributor Retail Price) of the channel and bouquets being made available to the consumer.

13. That the consumer has complete freedom to select and choose his package or a-la-carte channels on the basis of his requirement and cost. Only the mandatory DD channels are being carried in national interest.
14. That a bouquet besides offering varied mix of content, larger discounts, offers convenience of selection and ease of operations in terms of activation and deactivation by the DPOs. In case, the channels are only subscribed on a-la-carte basis, the price of subscription will go up. The bundling of products helps in reducing the prices.
15. That the positive aspects of the bouquet system of channel distribution should be emphasized and the bouquet offerings should not be restricted in any manner. Therefore, there is no question of discounting the impact of bouquet system on television viewing.

Q16. Would it be appropriate to put restrictions on cross media ownership in one or more type of media segment based on mere presence of an entity in any segment in a relevant market?

Q17. In case you support the restriction based on mere presence in the relevant market, what all segments should be included for imposition of restrictions?

Further, in how many segments, presence of an entity should be allowed i.e. should it be "2 out of x" or "1 out of x", x being the total number of segments?

NBDA Comments in respect of Question 16 and 17

NBDA submits that it does not support the proposition which seeks to place restrictions on cross media ownership in one or more type of media segment based on mere presence of an entity in any segment in a relevant market, as this would obstruct media plurality in the market. Media entities should be permitted to have their presence on electronic and digital mediums without any forms of restrictions.

1. The primary basis of TRAI's recommendations to devise media ownership rules is to ensure viewpoint plurality. The ASCI Report of 2009 as referred to by TRAI during the earlier consultation, itself clearly mentioned that as regards the TV market, there was no significant concentration and dominance in the market for Hindi and English language and with local channels also being available, the concern of lack of plurality of news, views and opinions is non-existent as is evident from EY FICCI Frames Report of 2022⁹.
2. With that premise being questioned once again, there is no merit in going into in-depth review of the 'methods' to arrive at 'relevant market' and its parameters of measurement.
3. Changing scenario in media consumption and viewing:
 - i. With the advent of technology, the consumer today is exposed to a wide array of options which he/she can chose to satisfy the need for information and entertainment, which until a few years ago was dominated by traditional forms of media.
 - ii. To keep oneself updated about current affairs or to know more about upcoming projects, launches, events, etc. media exerts profound influence on view points. There has been a paradigm shift in viewing choices with the proliferation of digital/social media and online platforms. Traditional media such as print, TV and radio are facing extreme competition from such new media as is evident from market data.
 - iii. Convergence has made it possible for consumers to watch content online, on mobile devices, across geographical boundaries and virtually removing any kind of demarcation whatsoever from any given media platform. Hence, the term "*cross-media*" is becoming irrelevant and so is the concept of "*cross media restrictions*". With the defined borders of platforms diminishing, it is not possible to define a '*relevant market*'.
 - iv. TRAI needs to take into account the trends in media consumption caused by the growth of digital media and the manner in which viewers/audiences have started consuming information or seeking entertainment making it impossible and irrelevant to 'measure' or 'define' relevant markets in order to formulate media ownership/control restrictions.
 - v. Challenge of defining 'markets' in India viz-a-viz international markets: That in Western geographies which typically have one dominant language across the country, a news item which appears in one part of the country can easily be

⁹ https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2022/ey-ficci-m-and-e-report-tuning-into-consumer.pdf

disseminated to another part, given everyone understands the language. However, in India with so many languages spoken by so many exclusive demographics, it is important to re-create and convey the same news, in many languages. The diversity of India's linguistic framework is the driving force behind the wide range and presence of the number of TV channels, print media, radio, internet, etc and therefore, viewpoint plurality is not threatened in India unlike International markets like the United States of America (US) and United Kingdom (UK), where there is predominantly a single language media market. However, in India, the linguistic diversity and presence of multiple channels of media both at the national level and in the regional space, creates optimum diversified views and media pluralism as it is impossible for a single media outlet or owner to have 'influence' or 'dominance' and therefore the concept of "relevant markets" in India is irrelevant.

Q18. Would it be suitable to restrict any entity having Ownership/Control in a media segment of a relevant market with a market share of more than a threshold level in that media segment from acquiring or retaining Ownership/ Control in the other media segments of the relevant market? Please elaborate your response with justifications.

In case you support such restriction, please suggest the threshold level of market share for the purpose of imposing cross-media ownership restrictions.

Q19. Whether in your opinion, the restrictions on cross media ownership should be imposed only in those relevant markets where at least two media segments are highly concentrated using HHI as a tool to measure concentration? Please elaborate your response with justifications.

Q20. In case your response to the above question is in the affirmative, please comment on the suitability of the following rules for cross media ownership:

(i). No restriction on cross-media ownership is applied on any entity having Ownership/ Control in the media segments of such a relevant market in case its contribution to the HHI of not more than one concentrated media segment is above 1000.

(ii). In case an entity having Ownership/ Control in the media segments of such a relevant market contributes 1000 or more in the HHI of two or more concentrated media segments separately, the entity shall have to dilute its equity in its media outlet(s) in such a manner that its contribution in the HHI of not more than one concentrated media segment of that relevant market remains above 1000 within three years.

Q21. Please provide your inputs on the suitability of imposing restrictions on cross media ownership only in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration.

In case you find the abovementioned criteria of restricting cross-media ownership appropriate, please comment on the suitability of the following rules for cross media ownership in such relevant markets:

- (i) No restriction on cross media ownership is applied on the entities contributing less than 1000 in the Diversity Index Score in such a relevant market.*
- (ii) In case any entity contributes 1000 or more in the Diversity Index Score of such a relevant market, the entity shall have to dilute its equity in the media outlets in such a manner that the contribution of the entity in the Diversity Index Score of the relevant market reduces below 1000 within three years.*

Q22. In case you consider any other criteria for devising cross media ownership rules to be more appropriate, please suggest the same with sufficient justifications.

Q23. Considering the fact that sectoral regulators have played important role in bringing necessary regulations to facilitate growth and competition and to promote efficiency in operations of Telecom Services (Telecommunications and Broadcasting), in your opinion, should Merger & Acquisitions in media sector be subjected to sector specific regulations? Please justify your response.

Q23a. If yes, which among the following should be taken as the criteria for the same-
(i) minimum number of independent entities in the relevant market
(ii) maximum Diversity Index Score (iii) any other measure

Q23b. If no, what mechanism would you suggest for regulator to use for ensuring smooth and equitable growth of the sector?

NBDA comments in respect of Question 18 -23

In view of the fact that NBDA has submitted that there should be no restriction on cross media ownership as stated in the answers given to Questions 1, 2 and 3 above, Questions 18 to 23 do not require to be answered. However, it is stated that that M&A in media sector are not required to be subjected to sector specific regulations as detailed in this Consultation Paper.

VERTICAL INTEGRATION

Q24. In your opinion, should any entity be allowed to have an interest in both broadcasting and distribution companies/entities?

Q24a. If “Yes”, how would the issues of vertical integration be addressed?

Q24b. If “No”, whether a ceiling of 20% equity holding would be an adequate measure to determine “Control” of an entity i.e. any entity which has been permitted/ licensed for television broadcasting or has more than 20% equity in a broadcasting company shall not have more than 20% equity in any Distributor (MSO/Cable operator, DTH operator, HITS operator, Mobile TV service provider) and vice-versa?

Q25. Please suggest any other measures to determine “Control” and the limits thereof between the broadcasting and distribution entities.

NBDA Comment:

The aforementioned questions do not require any answer in view of the submissions made by NBDA in response to Question No.1 above.

CURRENT LEGAL REGIME VIS-À-VIS MEDIA OWNERSHIP IN INDIA

Q26. Do you think that the disclosures/ compliance reports for different type of licensees as described in Part II of Chapter VI are sufficient to ascertain the media Ownership/ Control by certain entity(ies)? If no, please specify, what additional details should be sought by the licensor or the regulator for effective monitoring.

Q27. What additional parameters, other than those listed in this consultation paper, could be relevant with respect to mandatory disclosures for effective monitoring and compliance of media ownership rules? Further, what should be the periodicity of such disclosures? Please justify your answer.

NBDA Comment:

NBDA submits that the current guidelines/compliance structure, including disclosure of requisite information by DTH, FM Radio, IPTV, HITS, Broadcasters (under Uplinking and Downlinking Guidelines) and Print Media are sufficient and no further mandate on periodic disclosure requirements need be formulated for media ownership as is being sought to be done by TRAI.

Q28. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

NBDA Comment:

NBDA submits that it has concerns with regard to the issues given below apart from its comments/suggestions given to the Questions raised in the consultation paper:

1. DAVP Advertisements

Chapter III deals with ‘Contours of Media Ownership/Control’ and has posed a question on suitable criteria for defining ownership/control. While this may or may not be a relevant question to be posed to arrive at the correct context and understanding of the nature of Government’s control over media, however, what needs to be determined is also the transparency and non-discriminatory approach to be followed in the share of Government advertisement revenues. Revenue distribution mechanism followed by DAVP should be uniform and transparent and should be agnostic to the nature and style of journalism adopted by the media entities.

2. Anticompetitive practice and Abuse of dominance by Tech Companies

- i. TRAI has in para 2.10 to 2.13 rightly noted that the digital media industry is unable to tap benefits due to commanding tech giants like Google, Facebook, Twitter, etc. The dominance and control exercised by Tech Companies like Facebook and Google (over 60%) is itself an indicator of the potential abuse which gets further corroborated and re-enforced because of their non transparent behaviour when it comes to sharing of advertising revenue. On the said issue, a case has been filed before CCI, which has directed the Director General to investigate the violations committed by Google, which amount to abuse of dominant practiced by it under Section 4 of the Competition Act, 2002.
- ii. From para 4.13 to 4.20, TRAI has acknowledged the concerns posed by news media which is only present on Internet. In fact, TRAI should issue recommendations on regulating big tech companies who are monopolies in social media & search engine segments like Facebook and Google. While there are sufficient checks and balances for traditional news platforms, wherein noncompliance can result in cancellation of permission, there is no segregation practiced at the end of social networking platforms and search engines. Social media and search engines also take a substantial share of advertising revenue for the content provided by the traditional news media broadcasters, which is unfair and arbitrary.
- iii. It may be noted that the news publishers, are dependent on Google and Facebook for referrals and traffic on their website. Therefore, the audience accesses their news through platforms which are not run or managed by or on behalf of conventional news/media entities.

- iv. Often, news is manipulated due to the algorithms used by search engines, websites and social media. For example, when a user is using Facebook or Twitter to view a particular video, or news article, then the algorithm usually pushes similar content/news items which is trending without giving any real or apparent control or choice to the users. Therefore, algorithms tend to create "*filter bubbles*", insulating viewers from opposing points of view. This is extremely dangerous given that 53% of adults get their news from social media platforms such as Facebook and Twitter.
- v. While issuing a Consultation Paper on cross media ownership is outside the jurisdiction of TRAI in the paragraphs mentioned herein above, TRAI has the power to issue recommendation with regard to measures to facilitate competition under the TRAI Act. Therefore, it is suggested, without overstepping its jurisdiction, TRAI should recommend the manner by which such abuse of dominance can be arrested or suggest checks and balances which can be put in place to ensure that no abuse takes place and to prevent or minimize any potential for the same in future. TRAI can also recommend the means and modes on how transparency can be built in the revenue share arrangements and in order to bring fair market practices to be adopted.

3. Carriage Fees

That the TRAI Interconnect Regulations on carriage fees have still not been implemented properly. While the Regulations did cap carriage fees to INR 4 Lacs however it has not been able to regulate the various other forms of collecting carriage fee which is to ensure the reach of the channels through which the content gets disseminated. The DPO is able to decide, monopolise and also extort an unreasonable fee of the so-called regulated carriage fees by giving it a flavour of '*placement charges*', '*marketing fee*', '*landing page charges*', etc and also creating restriction on market access. For the reasons mentioned above, the broadcaster is unable to achieve the desired reach resulting in '*denial of market access*' by imposing an undue financial burden in the form of carriage fee. In regional markets, many broadcasters have not been able to formally launch their regional channels because of nexus between broadcasters and DPOs.

Conclusion:

Having addressed specific issues raised by TRAI as above, given below is the overall perspective on the broader issues concerning Media Ownership and Control:

Key Aspects:

I. Constitutional Freedom:

Cross-Media restrictions sought to be imposed by TRAI would amount to imposition of an unreasonable restriction on the rights of the media to choose or

seek an alternative medium for dissemination of information and therefore, these restrictions infringe the fundamental rights guaranteed under Article 19(1)(a) of the Constitution. Allowing unrestricted access to a media entity to voice its views and permitting viewers to receive information/news on all available delivery platforms is in fact propagating media and viewpoint pluralism.

For efficiencies of scale, production quality and satisfying consumer preferences, it is critical that media companies are allowed to invest across media sectors.

II. Convergence and Media:

1. With convergence becoming a reality, the term '*cross-media*' is steadily losing its relevance. Convergence, Internet and Mobile telephony brings the newspaper, TV and radio channel on a single screen, thus making the very concept of specific media markets/geographies irrelevant. With multiple technological methods to disseminate information and consumption by consumers, there remains no virtual demarcation of a single medium. It is also not possible for a single entity to dominate any given market based on market share in a given geography within a media segment. There is no reasonable basis therefore to bring in any kind of cross media restrictions.
2. It is important to have a regime that is flexible to changing needs of the media space and it appears that TRAI has not in its present consultation considered the impact of such convergence in media before making its recommendation on media ownership.

III. Media Ownership/Control: Is there a need?

1. The complex issue is to determine the need for control itself and if measures are undertaken to control ownership in media such regulation will not be in public interest and can become a means for government controlling the media.
2. Despite increase in literacy levels, television in India remains the cheapest and the most widely accessed mode of entertainment and information medium and hence attracts maximum eyeballs in the Indian M&E industry, even though there is no monopoly and there is an effective market competition amongst the media companies. The economic viability and the overall development of this sector must be safeguarded before any kind of restriction is imposed.
3. A perusal of the restrictions in other countries would show that such curbs invariably relate to media entities diversifying only into terrestrial TV (which had limited channels) in view of its reach and not in satellite, cable and DTH services (which were not matured) and have scattered and fragmented

viewership.

4. A few years ago, the regulator had taken a view that there was enough competition and therefore, plurality in the industry and there was no need to regulate horizontal and vertical integration. From the industry perspective, the situation has actually worsened and there is far more competition in each segment.

IV. Impact Analysis of regulations:

1. By the present Consultation Paper, TRAI has proposed regulations that bring in sweeping changes in media ownership in India. As a general practice, in many international jurisdictions, a document known as the *Regulatory Impact Analysis (RIA)* is created before any new government regulation is introduced. RIA encompasses a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations. The central purpose of any *RIA* is to ensure that the regulation will be welfare enhancing from the societal viewpoint i.e., that the benefits will exceed costs. *RIA* is generally conducted in a comparative context, with different means of achieving the objective sought to be analyzed and the results compared.
2. TRAI has not supplied any *RIA* on the proposed regulations nor has it mentioned anywhere in the Consultation Paper that such assessment or impact analysis was conducted in respect of the proposed regulations.

V. Media Plurality:

1. As highlighted in the specific submissions above, with the kind of fragmentation seen in the Indian media industry and several players competing with one another, (over 1,40,000 publications, over 900 TV channels, over 200 private Radio stations and fast-growing Digital/OTT players), there is no threat whatsoever of dilution of plurality or dearth in diversity of opinions as regards any information presented to readers/viewers/listeners.

VI. Concurrent Laws- Competition law and TRAI's proposed regulations:

1. A concerning issue emerges with proposed regulations; that there will be concurrency of competition laws and media regulations. India has a fairly robust competition law framework and a specialist body (i.e., "CCI") that is charged with competition law enforcement.
2. TRAI's approach to the issues concerning competition in the media sector poses a significant problem of duplication of regulations and lack of synergy with the existing competition law framework in India.

VII. Consumer Impact

TRAI has also not undertaken any consumer study before undertaking this exercise. Further, in the consultation process, TRAI has proceeded with the same issues which were discussed in 2013 ignoring the fast changes in the technology and more importantly the consumer behavior. It is very important that a comprehensive consumer study is done prior to this consultation. For instance, TRAI has assumed that bouquet offerings are not beneficial to the consumers, whereas in reality 75% of the consumers still opt for bouquets in spite of having a clear choice of opting for a-la-carte channels. This cannot be blatantly termed as a “*forced choice*” by broadcasters and distributors but actual consumer behavior study should be undertaken to know the consumer behavior in Indian markets. Similarly, on the issue of “*plurality of views*” also, there should be a consumer study which should look specifically into this issue whether the consumers are facing issues due to the perceived “lack of plurality” in media.

Any attempt by the TRAI to formulate any kind of Media Ownership/Control rules, specifically on cross media holdings in India has to first and foremost consider the following:

1. Any restrictions on cross media holdings will hamper the tremendous growth potential for the Indian Media sector.
2. With over 900 TV channels, 1,40,000 registered publications and numerous digital platforms/publishers available in India as on date, there is no concern for lack of plurality in views and opinions.
3. The socio-economic-cultural conditions prevailing in the Indian media industry makes it a very different market as compared to other developed countries. With 22 official languages and 1500 dialects existing in India, it would be difficult to arrive at a ‘relevant market’ to measure dominance or concentration.
4. Restriction on investment (on the basis of equity holding threshold) in the Indian media sector will restrict companies from achieving technological developments at reasonable costs and deprive companies of optimum use of resources.
5. The presence of several players within and across all media segments in India signifies that there is no dearth for diverse opinions and views.
6. Restriction on entry of certain entities into the media sector is of utmost importance at present rather than devising rules to restrict cross media holdings.

The above submissions have been made on behalf of the members of the News Broadcasters & Digital Association.



Annie Joseph
Secretary General

24.6.2022